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**IN THE  
COURT OF APPEALS OF INDIANA**

GIUSEPPE PRESUTTO,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 20A05-0604-CR-215

APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable George Biddlecome, Judge  
Cause No. 20D03-0505-FA-69

November 20, 2006

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Giuseppe Presutto appeals his conviction of Dealing in Methamphetamine,<sup>1</sup> a class A felony, and presents the following restated issues for review:

- (1) Was there sufficient evidence to support his conviction?
- (2) Did the State establish the chain of custody of the methamphetamine?

We affirm.

The facts favorable to the conviction are that in late April 2005, Tina McQueary was arrested for a methamphetamine-related charge. Several days later, officers at the Elkhart City Police Department (the EPD) approached McQueary and asked if she would serve as a “cooperating source” in an effort to set up a methamphetamine purchase from Presutto. *Transcript* at 303. The EPD selected McQueary because of her personal relationship with Presutto. McQueary agreed to assist the EPD.

On May 2, 2005, EPD Detective Corporal UC305<sup>2</sup> spoke with McQueary to arrange for and instruct her about the details of the purchase from Presutto. After speaking with Corporal UC305, McQueary telephoned Presutto to arrange the methamphetamine purchase. The arrangement was that Presutto would meet McQueary and Corporal UC305 at McQueary’s home, and that Presutto would sell Corporal UC305 one ounce of methamphetamine for \$550. Thereafter, McQueary and Corporal UC305 met in the parking lot of a local mall and traveled together in McQueary’s car to her

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<sup>1</sup> Ind. Code Ann. § 35-48-4-1.1(b)(1) (West 2005)

<sup>2</sup> Corporal UC305’s name is never mentioned in the appellate record, nor was it revealed at trial. As may be apparent from the alias, Corporal UC305 is an undercover officer who works for the Elkhart County Organized Crime and Drug Enforcement Unit.

home. Corporal UC305 searched McQueary for drugs in the parking lot and at McQueary's home. McQueary did not possess drugs.

Several police officers from the EPD conducted surveillance of McQueary's home before Corporal UC305 and McQueary arrived. Among the police officers was UC8618. After Corporal UC305 and McQueary arrived at her home, UC8618 positioned his/her<sup>3</sup> car close to a nearby intersection from which point McQueary's home was easily observable. Presutto arrived at McQueary's home approximately five minutes after McQueary and Corporal UC305. UC8618 observed Presutto arrive alone in and exit a red, four-door Pontiac Grand Am. Presutto proceeded to McQueary's garage, where McQueary and Corporal UC305 waited. Once inside, Presutto told UC305 and McQueary the methamphetamine was in the "beep-beep in the car[,]" which UC305 and McQueary both understood to mean Presutto stored the methamphetamine in the steering column of his car. *Id.* at 229. At Presutto's direction, McQueary went to Presutto's car, retrieved the methamphetamine from the steering column, and returned with a "bag with white powder." *Id.* at 230. Presutto told McQueary to retrieve the methamphetamine from his car because he did not want to handle it.

After McQueary returned with the methamphetamine, Presutto informed Corporal UC305 he knew the methamphetamine was of good quality because "[h]e was up on it all night." *Id.* at 277. At some point during the conversation, McQueary asked Presutto whether he could get Corporal UC305 another ounce of methamphetamine. Presutto

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<sup>3</sup> It is unclear from the record whether UC8618 is a female or a male.

indicated he could, but that it would take forty-five minutes to return because the methamphetamine was not at his house. Thereafter, Corporal UC305 directly handed Presutto \$1,100 in exchange for two ounces of methamphetamine. Before meeting McQueary, Corporal UC305 photocopied the bills she used to purchase the methamphetamine.

Following this exchange, Presutto left McQueary's home. Corporal UC305 notified UC8618 and other EPD officers that Presutto was leaving. Several minutes later, EPD officers arrested Presutto during a traffic stop and took him to jail. Officers recovered \$1,100 in cash from Presutto. The serial numbers of the recovered bills matched the serial numbers of the bills Corporal UC305 used to purchase the methamphetamine. Corporal UC305 inventoried the bag of methamphetamine and placed it in a vault to which access was restricted, and later delivered the methamphetamine to the Berrien County, Michigan, Forensic Lab (the lab) in a sealed container. Wanda Sheppler, an employee at the lab, placed the methamphetamine in a vault accessible by only three employees. Sheppler determined there was 28.119 grams of methamphetamine in the container. Dewey Murdick, chief chemical analyst at the lab, conducted a chemical analysis of the white powder and confirmed it was methamphetamine.

On May 6, 2005, the State charged Presutto by information with dealing in methamphetamine as a class A felony. Following trial, the jury found Presutto guilty, and the trial court sentenced Presutto to thirty years of imprisonment. Presutto now appeals.

Presutto contends there was insufficient evidence to support his conviction because there was a lack of evidence that he delivered methamphetamine, there were inconsistencies in two witnesses' testimonies, and there was a lack of proof regarding the buy money. When reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge witness credibility. *Brink v. State*, 837 N.E.2d 192 (Ind. Ct. App. 2005), *trans. denied*. We look to the evidence most favorable to the conviction and any reasonable inferences drawn therefrom. *Shirley v. State*, 803 N.E.2d 251 (Ind. Ct. App. 2004). We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

The State charged Presutto with dealing in methamphetamine on the theory that he delivered it. I.C. § 35-48-1-11 (West 2005) defines "delivery" as: "(1) an actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship; or (2) the organizing or supervising of an activity described in subdivision (1)." Presutto argues there was insufficient evidence that he delivered the methamphetamine because he "never was seen to handle the meth, and certainly did not hand the meth to McQueary, nor did he hand the meth to [Corporal] UC 305." *Appellant's Brief* at 9. In support of his argument, Presutto seeks to distinguish *Laird v. State*, 483 N.E.2d 68 (Ind. 1985).

In *Laird*, the defendant, who was convicted of dealing in a controlled substance, contended the evidence was insufficient to support the element of delivery. In that case,

the defendant picked up his girlfriend and told her they were going to Lafayette. While in the defendant's car, his girlfriend noticed her beach bag in the backseat. When she opened the bag she saw pills, some of which were in marked containers and others that were loose in the bag. The defendant drove to the home of an acquaintance, took the bag from the car, and gave it to his girlfriend. The defendant instructed her to carry the bag into the home and give it to the man, which she did. The man took the bag into a bedroom where the defendant, the girlfriend, and he sorted the drugs and repackaged them for future sales. The defendant contended on appeal that his girlfriend, not he, delivered the drugs. After examining the statutory definition of "delivery," our Supreme Court concluded that "this is the situation contemplated by the concept of constructive transfer." *Id.* at 70. Our Supreme Court noted the drugs were transferred for the defendant and at his request and, therefore, affirmed his conviction. *Id.*

In this case, Presutto transported the methamphetamine to McQueary's home in his car, instructed McQueary to retrieve the methamphetamine from his car and to give it to Corporal UC305, and accepted money directly from Corporal UC305 in exchange for the methamphetamine. As in *Laird*, Presutto did not physically make the transfer. The transfer, however, was made at Presutto's direction, which constitutes delivery. *See Radford v. State*, 468 N.E.2d 219 (Ind. 1984) (sufficient evidence existed to convict the defendant of dealing in heroine even though the defendant did not physically transfer the drugs because he negotiated the transaction and knew the contents of the delivered package); *Culbertson v. State*, 792 N.E.2d 573 (Ind. Ct. App. 2003) (sufficient evidence existed to conclude the defendant delivered methamphetamine even though he did not

physically transfer the drugs where the defendant directed a friend to give an undercover officer methamphetamine and supervised the exchange), *trans. denied*.

Presutto further argues there is insufficient evidence because of several inconsistencies in the witnesses' testimonies. The inconsistencies upon which Presutto bases his argument are: (1) Corporal UC305 testified that Presutto told McQueary she could sample the methamphetamine, but McQueary testified that Presutto never made this offer; and (2) Corporal UC305 testified that McQueary placed the methamphetamine on a table in the garage, but McQueary testified she handed it directly to Corporal UC305. We fail to understand how these trivial inconsistencies impact whether Presutto knowingly delivered at least three grams of methamphetamine. Presutto's argument is essentially an invitation to reweigh the credibility of the witnesses, which we decline to accept. *See Saunders v. State*, 848 N.E.2d 1117, 1121 (Ind. Ct. App. 2006) ("we do not reweigh the evidence or judge the credibility of witnesses"), *trans. denied*.

Finally, Presutto argues "[a]lso lacking is proof regarding the buy money" because "[n]owhere is the photocopied money offered into evidence, and neither is the money recovered from Presutto offered for comparison purposes." *Appellant's Brief* at 8, 9. Presutto provides no authority in support of the proposition that the State is required to submit photocopied money to verify the serial numbers on particular units of currency. In any event, evidence of the bills' serial numbers was unnecessary for the conviction. Under the facts of this case, there was sufficient evidence that Presutto knowingly delivered three grams of methamphetamine.

2.

Presutto contends the State failed to establish the chain of custody of the methamphetamine. The trial court admitted State's exhibits 2 and 4, a photo of the methamphetamine in a plastic bag and a lab report regarding the chemical makeup and weight of the methamphetamine, respectively. Presutto did not object to the admission of the evidence at trial. Where there is no chain of custody objection to the admission of evidence at trial, such a claim is not available on appeal unless it constituted fundamental error. *Troxell v. State*, 778 N.E.2d 811 (Ind. 2002). Nowhere in his brief does Presutto claim the admission of this evidence constituted fundamental error. His claim, therefore, is waived. *Cf. Willey v. State*, 712 N.E.2d 434 (Ind. 1999) (defendant's claim not waived on appeal even though no objection was made at trial because he asserted the admission of evidence constituted fundamental error).

Judgment affirmed.

NAJAM, J., and DARDEN, J., concur.